

IN THE MATTER OF THE *PREVENTION OF CRUELTY TO ANIMALS ACT*,
R.S.B.C. 1996, c. 372
ON APPEAL FROM A REVIEW DECISION OF THE BC SOCIETY FOR THE PREVENTION OF
CRUELTY TO ANIMALS CONCERNING THE SEIZURE OF 27 HORSES

BETWEEN:

ZSA ZSA STIASNY

APPELLANT

AND:

BRITISH COLUMBIA SOCIETY FOR THE PREVENTION OF CRUELTY TO
ANIMALS

RESPONDENT

DECISION

APPEARANCES:

For the British Columbia
Farm Industry Review Board:

Brenda Locke, Presiding Member
Andreas Dolberg, Vice Chair
Corey Van't Haaff, Member

For the Appellant:

John Swain Jr., Counsel

For the Respondent:

Andrea Greenwood, Counsel

Date of Hearing:

March 18, 2016

Location of Hearing:

Teleconference

I. Overview

1. This is an appeal pursuant to s. 20.3 of the *Prevention of Cruelty to Animals Act*, R.S.B.C. 1996, c. 372 (the *PCAA*).
2. The appellant appeals the February 12, 2016 review decision issued under s. 20.2(4)(b) of the *PCAA* by Marcie Moriarty, Chief Investigation and Enforcement Officer of the British Columbia Society for the Prevention of Cruelty to Animals (the Society).

II. Brief Summary of the Current Decision Under Appeal

3. Twenty-seven horses were seized from a property in Maple Ridge on January 7, 2016 (according to the Notice of Disposition) when they were determined to be in distress.
4. Section 20.6 of the *PCAA* permits the BC Farm Industry Review Board (BCFIRB), on hearing an appeal in respect of an animal, to require the Society to return the animal to its owner with or without conditions or to permit the Society in its discretion to destroy, sell or otherwise dispose of the animals.
5. For reasons that will be explained in detail later, the Panel has decided to issue a delayed return order that these horses be returned to the Appellant, Ms. Zsa Zsa Stiasny subject to the conditions noted below.
6. Reasonable care costs will also be ordered in favour of the Society and the Panel will also address this issue in detail below.

III. The Society's Powers and Duties

7. The Society under the *PCAA* is mandated to prevent and relieve animals from situations of cruelty, neglect and distress. The Society can seize animals from the care and custody of their owners or take custody of abandoned animals, as authorized by the *PCAA*. The Society's investigation and seizure powers are set out in Part 3 of the *PCAA*, entitled "Relieving Distress in Animals".
8. The March 20, 2013 legislative reforms, set out in Part 3.1 of the *PCAA*, state among other things that if the Society has taken an animal into custody under section s. 10.1 or 11, an owner may request a review by the Society within the specified time limits: *PCAA*, s. 20.2(1), (2). If a review is requested, the Society must review the decision and must not destroy, sell or dispose of the animal during the review period unless it is returning the animal: *PCAA*, ss. 20.2(3).
9. The *PCAA* does not set out any specific process for the review. Administratively, the Society's current process where a review is requested is to prepare a disclosure package and then to invite submissions from the owner concerning the return of the animals and to consider these submissions in light of the investigation results to determine whether it is in the animals' best interests to be returned to their owners.
10. Sections 20.2(4) and (5) of the *PCAA* set out the Society's options following a review:

20.2 (4) The society, following a review, must

- (a) return the animal to its owner or to the person from whom custody was taken, with or without conditions respecting
 - (i) the food, water, shelter, care or veterinary treatment to be provided to that animal, and
 - (ii) any matter that the society considers necessary to maintain the well-being of that animal, or
 - (b) affirm the notice that the animal will be destroyed, sold or otherwise disposed of.
- (5) The society must provide to the person who requested the review
- (a) written reasons for an action taken under subsection (4), and
 - (b) notice that an appeal may be made under section 20.3.

IV. The Appeal Provisions

11. We are guided by the approach to appeals under the *PCAA* which is set out in detail in *A.B. v British Columbia Society for the Prevention of Cruelty to Animals*, (August 9, 2013), which decision was upheld by the Supreme Court on judicial review¹. In summary, the right of appeal to BCFIRB gives persons adversely affected by certain decisions of the Society an alternative to a more formal judicial review or judicial appeal. The reforms give BCFIRB broad evidentiary, investigation, inquiry and remedial powers upon hearing an appeal: ss. 20.5 and 20.6. The *A.B.* decision reads in part:

Appeals under Part 3.1 of the PCAA are not required to be conducted as true appeals, and BCFIRB is not required to defer to decisions of the Society. In my view, the appellant has the onus to show that, based on the Society's decision or based on new circumstances, the decision under appeal should be changed so as to justify a remedy. Where, as here, the Society has made a reasoned review decision, BCFIRB will consider and give respectful regard to those reasons.

However, that consideration and respect does not mean the Society has a "right to be wrong" where BCFIRB believes the decision should be changed because of a material error of fact, law or policy, or where circumstances have materially changed during the appeal period. BCFIRB can give respect to Society decisions without abdicating its statutory responsibility to provide effective appeals.

The clear intent of this reform legislation was to give BCFIRB, as the specialized appeal body, full authority to operate in a way that is flexible and accessible to lay persons, and to use its expertise to ensure that decisions are made in the best interests of animals. The procedure followed by BCFIRB is a flexible approach specifically crafted to accomplish the intent of the legislation in the context of animal welfare and lay participation. This includes taking into account developments occurring since the Society's decision was made. This is entirely in accord with the inevitably fluid nature of the situation, and well within the powers granted by section 20.5 of the PCAA.

¹ *BC Society for Prevention to Cruelty to Animals v. British Columbia (Farm Industry Review Board)*, 2013 BCSC 2331

V. Preliminary Matters

12. All affidavits, witness statements, reports, emails, photographs and videos, invoices, and documentary evidence submitted were entered into evidence. The telephone hearing process does not require that all documentary evidence be discussed or read into the record but we wish to expressly note that the Panel has carefully reviewed all of the documentary evidence and written submissions referred to above, whether or not it is referred to in the course of this decision.
13. On March 14, 2016, the Appellant requested an extension of time to file its reply to the Society's response on the ground that the Society had "not provided all of the documents required by the appeal process". The Panel dismissed the Appellant's application and provided notice with reasons to both parties on March 15, 2016.

Material Admitted Into Evidence

Appellant:

- a) Appellant Notice of Appeal (perfected on February 17th) (**Exhibit 1**)
- b) Appellant Written Submission, (via email March 2nd) (**Exhibit 2**)
- c) Expert Witness Contact Form (Dr. Jeanneret via email Mar 10th) (**Exhibit 3**)
- d) Appellant Final reply submission (via email March 16th) (**Exhibit 4**)

Respondent:

- a) BC SPCA initial document disclosure – Tabs 1-35 (via email February 22nd and courier February 23rd) (**Exhibit 5**)
- b) BCSPCA further document disclosure – Tabs 36-38 (via email March 3rd) and courier on March 4th) (**Exhibit 6**)
- c) Expert Witness Contact Form (Dr. Marielle St-Laurent) (via email and courier March 11th) (**Exhibit 7**)
- d) Witness Contact Form SPC Christine Auzins and Leiki Salumets (via email and courier March 11th) (**Exhibit 8**)
- e) Written Submission(via email and courier March 11th) (**Exhibit 9**)
- f) M. Moriarty signed Affidavit #1, (via email and courier March 11th) (**Exhibit 10**)
- g) Package of Invoices (pages 420-455) (via email and courier March 11th) (**Exhibit 11**)

VI. The Appeal

Brief History

14. The Appellant leases a Maple Ridge property of approximately 14 acres (5.7 hectares) which, as of December 16, 2015, housed 29 horses and includes her primary residence. Some of the horses were used for a trail-riding business in a local park. Several of the horses had been brought to the property through a non-profit horse rescue society. Both the trail-riding business and the horse rescue society are managed by the Appellant. In response to complaints received regarding horses in the Appellant's care and the overall condition of the property, the Society attended the property

on December 16, 2015 and issued four separate Notices of Distress requiring the removal of hazardous debris and provision of clean, dry shelter and veterinary care for the horses. The Society attended the property on December 20, 2015 to examine two horses which required veterinary care. Both horses were determined to be in distress and were seized and were subsequently surrendered to the Society by the Appellant. On January 7, 2016, the Society again attended the property and seized the remaining 27 horses after determining that they were in distress. This appeal is regarding the Society's February 12, 2016 review decision not to return the 27 horses to the Appellant. One of the horses was subsequently determined to be in critical distress and was euthanized without objection from the Appellant, so this appeal and decision is now regarding the remaining 26 horses.

Society's Decision Under Appeal

15. In her February 12, 2016 written reasons, Marcie Moriarty, Chief Prevention and Enforcement Officer of the Society, found upon review that the horses were in distress when they were seized, and she declined to return the 27 Horses to the Appellant. The decision is excerpted here:

I turn now to the question as to whether or not it would be in the best interest of the Horses to be returned to you. In making any determination regarding the best interest of the Horses, I consider whether you would be able to ensure the Horses remained distress-free if they were returned. This is a duty owed by an owner pursuant to section 9.1 of the Act. I also consider the history leading up to the seizure of the Horses and your actions post seizure. Finally, in making this decision I rely on all of the documents noted above and for the purposes of brevity will not go into details from those documents.

The BC SPCA has always been open to returning some or all of the Horses to you as long as you provided them adequate housing. In my very first email to you on January 20th I wrote: "I want to reiterate that the main concern with respect to the horses was the environment (although there were other concerns regarding feet and some medical in some of the horses.) If you were to find a suitable property and ensure any ferrier/vet care was attended to, the BC SPCA would look closely at the option to return some or all of the horses." Again in my email dated January 21st, I state: "It is my sincere hope that we can conclude this as soon as possible and you are able to find a suitable property to house the horses."

Again in my letter dated January 21st, 2016, I state: "If you are able to find a suitable property and adequate accommodations for the horses, I am willing to return the horses immediately after you have paid the costs of care incurred to date..." I don't think I have ever had a case where I was so adamant about the fact that we were willing to return the animals. Unfortunately, you have made no significant effort to date to make changes to the Property.

Unfortunately, you have made absolutely no effort to even demonstrate an attempt to improve the property – there were obvious concerns that have been pointed out many times to you and I do not buy the arguments presented that you did not know what to do. The hazards such as nails, boards, broken fences, mud you get stuck in (knee-deep as her vet describes), significant manure build up, unstable flooring and no dry ground is in plain sight. This was all pointed out to you and again by your own veterinarian. In fact, at one point you did have volunteers come out and they were trying to make improvements on the property so clearly you knew what needed to be done but just did not do it. During this past month (and in fact much before the time of the warrant) you could have provided proper dry bedding and clean stalls (she could look to other barn operations for what a clean stall is), cleaned up manure (obvious), provide stable and proper flooring (again, obvious), scrap out the mud, clean up the hazards and improve the living conditions on at least part of her

property. You had a month with no horses to get this done and yet we have not been provided with any evidence that you have done anything.

Conclusion

After careful consideration of all of the material before me in this case, I have determined that it is not in the best interest of the Horses to be returned to you. Your plan would require the BC SPCA to house the Horses for even more time at a cost to donors and this is something we are not able to do at this time. As you are aware, pursuant to section 20 of the Act, you are responsible for all costs of care incurred during the dispute period regardless of whether your Horses were returned or not. A summary of the costs owed to date have been provided to you and we demand payment in full for these costs by no later than February 29, 2016.

The Society's Case

16. The Society relied on all its submitted material and submissions, and the Panel reviewed and considered all material, submissions and testimony, whether or not they are referred to in this decision.

Witnesses

Dr. Marielle St-Laurent

17. Dr. Marielle St-Laurent is a licensed veterinarian who graduated from the University of Montreal veterinary program in 2010. She has been a full time practicing veterinarian with Paton and Martin Veterinary Services since 2011. Most of Dr. St-Laurent's work has been directly with horse owner clients in the Fraser Valley, ranging from one horse to about fifty. She has also provided services for the Society about three to four times per year.
18. On January 7, 2016, Dr. St-Laurent attended the Appellant's property with Society officers to examine the horses and their living conditions. She filed a written report outlining her general observations, and described the condition of each of the 27 horses based on her examinations.
19. Both the report and her testimony described numerous hazards that the horses had ready access to, including poor fencing, deep mud, broken wood pieces with nails and screws protruding, metal grids in the mud and sheet metal with rusty torn sharp edges (some at eye level) on the shelters. The mud was reported to be particularly deep in areas where the horses had to go through to access either their feed or to get into a shelter. It was Dr. St-Laurent's opinion that the property was not a safe or appropriate environment for horses at the time of the inspection.
20. Of particular concern to Dr. St-Laurent with respect to the condition of the property was the high risk of the horses getting caught on hazardous sheet metal or nails that may cause lacerations and from getting stuck or slipping in the mud, resulting in severe injuries. Because of horses' flighty behavior she indicated that this risk is much greater than with other domestic species. Dr. St-Laurent was clear in response to questions, however, that she did not observe any severe injuries in the horses that could be attributed to either slipping in the mud or to the hazardous items such as protruding sheet metal.

21. The report also noted that the front of the property was adjacent to a busy road, with a fence that was down and only blackberry bushes about 2 ½ ft in height kept the horses from the road. Where there were fences, most were reported to consist of large squared metal wire, which is not recommended for horses because they can put their foot through the openings and get cut by the wire.
22. Another concern noted in the report was plastic wrapping around the silage in the feeder and in one of the paddocks. Dr. St-Laurent recommended that all of the plastic should be removed from the feed as the horses will ingest parts of it and this could become problematic. It was however noted that the quantity of silage available was adequate for the number of horses.
23. The report also stated that one of the water tubs was completely frozen over. When questioned on this, Dr. St-Laurent testified it is not common to have heaters for water troughs in the Fraser Valley and that owners generally just break the ice in the morning or add warm water. She also stated that there was no sign of dehydration in the horses.
24. Regarding the overall condition of the horses, the report stated that all horses showed traces of diarrhea, but that it was not a life-threatening or dangerous type of diarrhea. Most of the horses were reported to be overweight, some had good body condition and all of the horses were well hydrated. There was only one older horse that was underweight, but it was noted that it is not uncommon to have problems keeping weight on older horses even with proper care. All but two horses, one of which was wild and the other aggressive, were calm and easy to handle. Most of the horses were reported to have received farrier care and quite a few had shoes, but a few were overdue with very long hooves. Three horses had visible lameness issues at the walk and two had wounds that were not being treated and that were covered in mud.
25. The report stated that all of the horses were covered in mud to some degree, making it difficult to see the extent to which each horse had dermatitis, a skin infection and inflammation which according to Dr. St-Laurent is due to the chronic wet conditions on the property, lack of access to dry shelter and insufficient grooming. She stressed that all of the horses required bathing to determine if they have skin conditions and to see the full extent of any infections, which some also had. In Dr. St-Laurent's opinion, the number of horses with significant dermatitis was very high and proper regular grooming and better environment would have prevented these issues.
26. Dr. St-Laurent testified that the dermatitis can develop into more severe situations known as Mud Fever, and that one or two horses were showing signs of developing this condition but none were severe. In her opinion, it was likely that the dermatitis in several of the horses would become more severe under the conditions observed at the property. It was noted also that one of the horses had severe and extensive dermatitis all over his back and body, commonly called rainrot, where the hair comes out in chunks with the skin attached when gently pulled.
27. Dr. St-Laurent testified that she would not have felt comfortable leaving any of the horses at the property on January 7, 2016.

Christine Auzins

28. Christine Auzins is an authorized agent of the Society and is duly appointed as a Special Provincial Constable (SPC) under the provincial *Police Act* and said she is responsible for most horse files in the Lower Mainland, along with one other Constable.
29. SPC Auzins testified that on December 16, 2015 she attended a cruelty complaint from 2 days before with the Society's ACO Jim Gilberts at the Appellant's property. They were at the property with the Appellant from about 10:30am to 12:30pm. SPC Auzins said that a few horses were loose in the muddy driveway area and four were located in a muddy front paddock with limited shelter. Twenty one horses were loose in the back field, with the majority of them on muddy ground, but there was only room for five to six of these in the larger shed and four in another smaller one.
30. SPC Auzins testified that numerous concerns were pointed out to the Appellant, including inadequate shelter for the horses; deep mud which went over their rubber boots in some locations; plastic wrap not removed from hay bales that horses had ready access to; nails and screws protruding from most fence posts; a very low roof on one shelter; metal grates over the mud; and a row of pallets covered by plywood (to make a bridge-type structure) covering the deep mud in another area.
31. SPC Auzins testified that she served the Appellant with a Notice of Distress on December 16, 2015 to provide the horses with clean, dry shelter, veterinary care and the removal of all hazardous debris from the property within 14 days. SPC Auzins testified the Appellant was given only 2 weeks to comply because the Society had been to the property previously with similar concerns. SPC Auzins also stated that the Appellant is running a business and receiving donations so in SPC Auzins' opinion, the Appellant should be held to a higher standard and should also have the resources, including human resources through her volunteers, to make the changes required in the Notice. SPC Auzins testified that the Appellant was also fully informed of the Notice details, so was well aware of its contents. Two separate Notices of Distress were also issued on the same day (December 16) - one required veterinary care for two horses (Dodge and Theo) within 72 hours, and the other required the separation of three other horses (Ruby, Nina, and Artie) to monitor for lameness and a need to arrange for veterinarian examinations if those horses were still lame within 72 hours.
32. SPC Auzins testified that on December 20, 2015 the Society's SPC Leanne Thomson applied for and obtained a warrant and attended the property with other Society staff members and a veterinarian. SPC Auzins said that the two horses, Theo and Dodge, were examined and that neither had been seen by a veterinarian after the December 16, 2015 Notice of Distress was served. SPC Auzins testified that SPC Thomson advised the Appellant that she was not in compliance with the Notice, and the two horses were seized. SPC Auzins also testified that the Appellant subsequently surrendered these horses to the Society.
33. On January 4, 2016, SPC Auzins and the Society's Farm Animal Care Supervisor Leiki Salumets attended the Property as previously scheduled with the Appellant to re-check the living conditions for the horses on the property. SPC Auzins testified that she noticed a few volunteers were repairing fences with old boards and one was cleaning out one of the shelters. Compared to the initial December 16, 2015 observations, SPC Auzins testified that there were still plenty of hazards on the property. She said there were still areas where the horses could fall through the mud and that

even individuals in attendance got stuck several times. SPC Auzins said that only some of the metal grates had been removed from the mud and the protruding sheet metal was still on the sheds. The only way for the horses to access the largest shelter in the back was to walk through deep mud or onto the previously noted bridge-type structure made of pallets covered by plywood, but now there were more holes in the plywood. She said that wire used for fencing was loose with barbed wire draped over the fence in one area and that there were lots of protruding nails on the perimeter fence.

34. Also while attending the property on January 4, 2016, SPC Auzins noted that all of the gates were now opened, allowing all of the horses access to the entire property so there were no areas that just a few horses were confined to. She observed that there were more opportunities now for horses to exercise dominance over food, though she did not observe this. SPC Auzins testified that she was concerned over the length of time it was taking to make the changes required by the December 16, 2015 Notice and, from her discussion with the Appellant, expressed concern that there was “no set plan in place”.
35. SPC Auzins testified that she briefly attended the property on January 6, 2016, returning on January 7, 2016 to execute the Warrant to Search the Property. With her on January 7, 2016 was the veterinarian Dr. St-Laurent, other constables and Society staff and RCMP Constable Gafka, who stayed with the Appellant in her residence while the others undertook an assessment of the property conditions. SPC Auzins testified that the only change of note on the property since her attendance on January 4, 2016 was that the Bobcat machine had been moved. She testified that there was at least some dermatitis in almost all of the horses; that some horses had new (i.e. from the last attendance) injuries and wounds; and that overall the deep mud, lack of shelter, and hazards and debris remained unchanged. Based on this assessment and the fact that January 7, 2016 was 3 weeks since the order to make the improvements within 14 days had been issued, SPC Auzins testified that they made the decision to seize all of the horses. After her onsite discussion with Dr. St-Laurent, SPC Auzins testified that there were still injurious objects and only minimal work done and she felt it was unsafe to leave the horses. She stated that she then attended the residence to advise the Appellant of the decision.
36. During cross examination, SPC Auzins was asked about the Society’s interpretation of the *Code of Practice for the Care and Handling of Equines* (the *Code*) particularly with respect to shelter requirements. She stated that the Society would have no concerns as long as the horses were not showing any ill signs from weather. She stated that if it is questionable on a particular property whether there was adequate shelter, the Society would consult with a veterinarian. In the property in question, however, SPC Auzins stated that it was “blatantly obvious” that there was inadequate shelter for the horses. With respect to *Code* requirements concerning muddy conditions, SPC Auzins stated that a property can have muddy areas that horses have access to, but they must be able to readily get to dry areas where they can lie down. Regarding why she would take the time to point out in her written notes that the Appellant would regularly “roll her eyes” when concerns about her property were pointed out to her, SPC Auzins indicated that she was just taking notes of her observations.
37. When asked by the Panel why some horse owners should be held to a higher standard than others, as SPC Auzins had testified, she stated that someone with 30 years horse experience who runs a horse business should be very familiar with the *Code* requirements, and SPC Auzins would expect that such a person would understand what could injure a horse. SPC Auzins also stated that she

would have issued these Notices for any property that had the conditions this one did. When asked by the Panel if she still had concerns with the property given the testimony of the Appellant regarding recent improvements and the potential for a veterinarian to re-check the property, SPC Auzins stated that if the *Code* is complied with and the veterinarian is confident, that is all she asks of a property.

Leiki Salumets

38. Leiki Salumets has been the Farm Animal Care Supervisor for the Society since September 2015 and has worked for the Society for the past six years.
39. Ms. Salumets testified that it has been her responsibility to oversee the care of the horses since they were seized by the Society on January 7, 2016. She described the care being provided by Society staff as follows:
 - a. After the horses had all been properly bathed, it was found that every one of them had dermatitis to some degree, and had differing requirements with respect to treatment. For example, horses with severe dermatitis require daily bathing whereas others only every other day or every days.
 - b. Topping up any waters daily and doing a quick health check. Vitals are not checked daily unless there is a cause for concern.
 - c. Stall and paddock cleaning. Horses are housed in stalls that allow them to go in and out under appropriate social pairs or larger groups. Some have been given their own stalls with adjoining paddock.
 - d. Establish turnout routine to ensure horses are rinsed off or bathed after turnouts so that no dirt or mud accumulates, and to ensure that dermatitis treatment is working.
 - e. Two horses had very limited handling so are getting extra care by working on slowly building trust.
 - f. Daily feeding in consultation with nutritionist to help determine the best feeding plan for each individual horse.
 - g. Care is under advisement of a veterinarian.
 - h. Two full time staff, 7 days per week are included in the costs, but Ms. Salumets' salary or costs are not included.
40. With respect to overall costs, Ms. Salumets pointed to Exhibit 10, paragraph 35, but noted that vitals are not done on a daily basis unless deemed necessary by a veterinarian:
 35. *The sum of \$25.58 per day per horse is broken down as follows:*
 - a. *Bedding costs: \$1.00*
 - b. *Hay and Feed costs: \$6.18*
 - c. *Staff time at a rate of approximately \$12.00 per hour: \$10.00*
 - i. *20 minutes stall and horse cleaning, including inspection of vitals: \$4.00*
 - ii. *15 minutes morning feeding: \$3.00*
 - iii. *15 minutes evening feeding: \$3.00*
 - d. *Boarding Costs: \$8.40*
 41. On average for the horses generally, grooming is required every one to two days and some required multiple bathing sessions (Elvis in particular). On average, bathing is done every 3 to 4 days, as needed.

42. Ms. Salumets stated that it is important to house horses together if possible as it reduces stress and also costs (i.e. less travel). The Aldergrove facility is very central and could ensure that they were well looked after by Society staff and volunteers at the self-boarding facility. A few horses that did not seem to be doing well socially were moved to the Society's Surrey facility, as it was decided this was in their best interests.
43. Under cross examination, Ms. Salumets testified that less than 1 per cent of Society boarding time was used for vital monitoring as this was only done as necessary by the advice of a veterinarian.
44. Ms. Salumets testified that most veterinary bills were incurred after the horses had been in care for a long time.
45. Ms. Salumets testified that the Society did specifically seek donations to cover the cost of care for these horses as seizures like this are not part of the budget.
46. Ms. Salumets testified that \$19 per day per horse in the *Kelpin v BCSPCA* case was correct, that she believed the figure of \$25.58 was arrived at around March 7, 2016 and that the daily rate for the Society caring for a horse is not as established as caring for a dog or cat. She had no explanation for why the costs were now different other than these horses were being cared for at a new facility. She said she does not know if the cost per horse will change with each seizure or with the size of a seizure.
47. In response to a Panel question about the cost per horse, she said she could not explain if it would change per seizure but thought this current cost reflected the size of the seizure. When asked why the size of the seizure would influence a 'per horse per day' cost, Ms. Salumets could not provide any information.

The Appellant's Case

48. The Appellant relied on all her submitted material and submissions, and the Panel has reviewed and considered all material, submissions and testimony, whether or not it was referred to in this decision.

Witnesses for the Appellant

Zsa Zsa Stiasny

49. The Appellant stated that she has over 30 years experience working with horses, mostly raising and training foals. She ran a horse rescue service out of another rented Pitt Meadows property for 3 years, and when it was sold 4 years ago she moved to her current location.
50. Regarding the property where she currently resides, the Appellant testified that she has always known that it was far from an ideal property but that it was the best that she could find. She said that she has tried for years to get the owner to make improvements to the property. She testified that she uses some of the horses to provide trail riding services in nearby Golden Ears Park, indicating that she has a contract with the Park to provide this service. She stated that this limits where she can be located, as she needs to be within the vicinity of the Park.

51. Regarding the first Notice of Distress received by the Appellant on December 16, 2015, her affidavit dated March 2, 2016 stated the following:

I received a Notice of Distress A5935 on Dec 16, 2015 with the description of 30 equine. It had 12 items checked and comments to remove any/all hazards/debris. Ensure dry areas available to retreat from mud – ensure(s) shelters dry/suitable size for each horse. I was given 2 weeks to comply. I began some work on the property but was not given a clear specific standard as to what was required to satisfy the SPCA. On Dec. 18, 2015, I called the SPCA to request a list of everything that needed to be dealt with, item by item to avoid seizure of the animals because I didn't want the SPCA to see a nail sticking out and take the horses. On Dec 27, the SPCA returned my call and told me the Notice of Distress was sufficient and in the alternative to refer to the Code of Practice for the Care and Handling of Equines. I was told the SPCA would do a re-inspection on January 4, 2016.

52. The Appellant testified that in addition to the notice being very unclear, the two weeks given for her to comply was totally unreasonable, stating that it was the wrong time of year to make the improvements to the property and that it was simply not enough time to do it. She stated that she would have required up to fifty days in order to do everything cited. She said that she did nevertheless try her best to do some of the work, but it wasn't specific enough to know for certain what it was that the SPCA required. She also questioned the extent to which the hazards cited truly did cause distress for the horses, stating "the horses never got hurt from any of it; and if anything did happen it was immediately dealt with."
53. The Appellant testified that she became very upset when she came home on December 20, 2015 and saw Society officers on site loading up horses. She said it had just been 72 hours since she received the Notice to provide veterinarian care for the two horses Theo and Dodge within that time period. The Appellant explained that she later (on December 27, 2015) surrendered both of them to the Society because she didn't want them to seize any more of her animals; it was her view at the time that the Society would be more likely to pursue the seizure of more horses if she tried to get Theo and Dodge back.
54. When asked under cross examination whether she was advised on December 20, 2015 that she was not within the requirements of the Notice of Distress issued December 16, 2015 A5935 (which dealt with conditions overall), the Appellant said, "yes, but we were not given enough time to do everything." She said that she had done some clearing and removal of debris, but stated it was not clear at all from the Notice just what was all required. She also questioned the statement requiring "each horse" to have enough room in a shelter to stand and turn around. If this meant a stall for every horse, the Appellant disagreed that was necessary, stating that the horses "manage themselves" by going in and out of the shelters as they please. When asked about the requirements for shelter on page 14 of the *Code*, the Appellant said that she does comply with that requirement, as the horses do have shelter.
55. Regarding the previously scheduled January 4, 2016 re-check of the property conditions by SPC Auzins and the January 7, 2016 seizure of the 27 horses, the Appellant's affidavit stated the following:

On Jan. 4, 2016, I received a Notice of Distress A5942 with the description of various equine. It had 5 items checked and comments to have 4x horses seen by a veterinarian with 24 hrs. (Arty, Nutmeg, Jazzy and Quincy) follow any/all recommendations. On Jan. 5, 2016, I complied with

the comments by having Dr. Stefanie Jeanneret DVM check the 4 horses as requested. I also called the SPCA to confirm she would forward them a report of her examination of the animals.

On January 7, 2016, the SPCA had Dr. Marielle St-Laurent DVM inspect the 27 horses on my property and then seized the 27 horses. The SPCA took pictures of the property and the horses at the time it (each one) was seized. After the seizure, I went into the hospital. After I was discharged from the hospital, I began looking for a lawyer to assist me. I did not receive the pictures taken during the seizure until Jan. 21, 2016. I did not receive a copy of Dr. St-Laurent's report until Jan. 22, 2016.

56. The Appellant testified that she was handed the warrant on the morning of January 7, 2016 and put under "house arrest", so was not allowed out of the house onto the property while the horses were being examined. She said she left the property at 1:00 pm because she "couldn't stand being there when they loaded up the horses". She testified she had an anxiety attack and nervous breakdown, which is why she was in hospital for seven days. It then took her three days to find a lawyer, which is when she filed the dispute with the Society.
57. The Appellant testified that it was in late January 2016 that Ms Moriarty suggested that she ask her veterinarian to undertake an inspection of the property and make recommendations. She further testified that she and her lawyer tried unsuccessfully to negotiate a return of the horses after Dr. Jeanneret had filed her report on February 2, 2016.
58. The Appellant testified that it was after receiving the February 12, 2016 review decision of Ms. Moriarty that the horses would not be returned that she made the decision to invest money from the sale of her house (her house being a different property than the one she leased for the horses and lived on herself) into the leased property. She said that she would never recover her investment into the property, but that the horses were more important than anything else to her. Further details of the work being undertaken were outlined in her March 15, 2016 Affidavit #2 attached to the Appellant Reply Submissions (Exhibit 4):

For the property, I'm constructing 2 large dry paddocks of rock and sand. In the areas they complained were too muddy, I have excavated all the muddy areas, down to the hard pan. I'm clearing all debris and hazards. Erecting 3 large shelters and extending and repairing existing ones. I am also acquiring a tractor to help maintain the areas. We will be fencing off some of the areas we have been excavating to allow the ground to dry out and harden after the rains. Many areas will be reseeded. This is not the best time of year for this work. The landlord is only allowing it because of the threat of losing my horses and how much it means to me to get my family back.

59. The Appellant testified that she ordered equipment and machine operators, which have removed all of the deep mud and that a full revamping of the property has been undertaken to make it into a "supreme deluxe" property; a place which she could be truly proud of and which goes far beyond what was recommended in Dr. Jeanneret's report. She said that most of the work is now (at the time of the hearing) complete, and that she estimates that eight working days are required to finish it off entirely.
60. When asked by the Panel why she didn't make the improvements before the Society ordered her to do so, the Appellant testified that it was her intention when she put her house up for sale on December 15, 2015 to buy a more suitable property, stating that the Society's visit on the following day was "purely coincidence." She would still have preferred to buy her own property, but given

the seizure of the horses she felt that she now had no choice but to invest her money into the leased property instead. She further stated that it wasn't until late February when the sale of her own house closed that she had the financial resources to do the necessary work.

61. Regarding the Society's costs, the Appellant asserted that the costs were unreasonable. The cost for feed and hay was more than what she would have spent. The boarding costs were higher than the quote she received from Triple CCC stables (a copy of which was submitted with her written material).

Dr. Stefanie Jeanneret

62. Dr. Stefanie Jeanneret is a veterinarian who graduated from the University of Montreal veterinary program in 1994 and moved to Maple Ridge in 1995 to practice veterinary medicine in the Fraser Valley. In April 1997, she started Golden Ears Equine Veterinary Services, which she still operates today. She worked with the Appellant many years ago and reestablished a client veterinarian relationship with the Appellant in 2014.
63. Dr. Jeanneret stated that she had not examined all of the horses on the property; that she examines and treats the horses that she is called out for and has 19 horses on the Appellant's file which she has seen. When asked by the Panel whether anything about their conditions gave her particular cause for concern, she replied that the conditions she has treated or made recommendations on were "all things I would see on other properties", adding that she visits many equine farms in the Fraser Valley. She stated that the horses on the property were not more sick or more injured than horses on any other properties that she attends as part of her veterinarian practice.
64. Dr. Jeanneret submitted a written report dated February 2, 2016 that assessed what in her professional opinion needs to be addressed in order to bring the Appellant's leased property up to a standard that would provide an environment suitable for the horses to be returned. The report states that Dr. Jeanneret read the report of Dr. St-Laurent regarding the seizure of the horses and that she concurs with Dr. St-Laurent that "...the property needs work to be safe for horses. Since then, only basic clean up has been done as it was unclear whether the horses were to come back at all." The report outlines a minimal amount of work required to make a portion of the property suitable for a total of nine to ten horses, then goes on to identify more extensive improvements required to make the property overall suitable for the horses' return.
65. Dr. Jeanneret testified that her report was initiated after the seizure of the horses by the Society, and that she visited the property three times since writing the report to provide advice to the Appellant on the necessary improvements, which were ongoing at the time of the hearing. She stated that the property "is currently not ready for the horses to be returned", but that the work completed to date is extensive and goes beyond what was recommended in her report. Upon completion of the planned improvements, Dr. Jenneret stated that the property will be ideally suited for the horses because it will be divided into smaller areas to allow, for example, an area designated specifically for pregnant mares. Dr. Jeanneret testified that every time she visited the property, more progress had been made.
66. Having seen the property as recently as the evening before the hearing, Dr. Jeanneret described the work overall as a "full revamping" of the property. She stated that the areas that had previously become deep with mud were scraped down to the hardpan and filled in, and that the mud has been

moved to one small area of the property, which is being fenced off. The 14 acre property will only have about 1 acre less available for the horses through these changes. She said that all of the debris, old fencing material and loose or protruding metal sheeting have been removed. The only remaining areas of concern are the completion of fences and shelters, and she estimated that these remaining improvements to the property would be complete in another six to eight working days.

67. When asked by the Panel about the risk of the property deteriorating again after the work is complete, Dr. Jeanneret stated that all properties require some ongoing maintenance. Also in response to questioning, she testified that she would be willing to do a final review of the property following completion of the improvements, if that could somehow assist in the process.

VII. Submissions, Analysis and Decision

68. The Appellant's position is that the Society conducted its investigation, seizure and decision to deny return of the animals in an arbitrary and unreasonable manner. It was argued that the Society did not provide any basis to support a 14 day requirement over the Christmas holidays to meet its orders which were vague, unfair, and failed to provide sufficiently specific descriptions of violations or corrections required to either avoid seizure or to guarantee the horses' return after seizure. The Appellant did nevertheless always know that winter conditions on the property presented challenges and once she had the resources (acquired through final closure of the sale of her house in late February) to make substantive improvements to the leased property, the site has undergone a wholesale change. The improvements were described in the Appellant's testimony and second affidavit, and supported in the testimony of Dr. Jeanneret, who visited the property three times while the work was underway and testified that the project will be completed within eight working days. The Appellant seeks the return of her horses and has undertaken to make the property suitable for their return. Regarding costs, the Appellant states that the Society has failed to develop a system to bill actual costs and that its current reliance on arbitrary estimates is unreasonable. The Appellant also requests an opportunity to negotiate a payment plan (an initial payment for which has been provided to her counsel) for reasonable costs incurred by the SPCA from January 7, 2016 through to the date the animals are returned.
69. The Society's position is that its Decision ought to be upheld and that it should be permitted to exercise its discretion to destroy, sell or otherwise dispose of the horses pursuant to s. 20.6(b) of the *Act*. To this end the Society plans on transferring ownership of the horses to a compassionate person or family capable of providing the horses with appropriate accommodations and care so that the horses do not once again fall into a state of distress. It is the Society's view that this is the best way to ensure the horses are physically and emotionally cared for throughout the duration of their lives. The Society concludes that the Appellant has failed to show that the Society's Decision is unreasonable or incorrect, or that the costs are unreasonable. The Society maintained that it was always prepared to return the horses to the Appellant with changes made to the property that would be in the best interests of the horses. The Society asserts that the changes required to bring the property into an acceptable state were not made in a timely fashion, and that the Appellant had only made minimal changes by the time the Society seized the horses, contrary to the Notices issued. At the time of the written reasons, the property was not a safe place for the horses and the horses' best interests mitigated against their return. The horses were seized due to more than just mud; the Appellant failed to provide adequate care and veterinary care for the horses.

70. The Society seeks its costs from the Appellant or, if the Society is ordered to return the horses, seeks that the Appellant first pay the Society its costs and that if such costs are not paid within seven days of the date of the Panel decision, that the Society may dispose of the horses forthwith, with proceeds of sale in excess of its care costs being reimbursed to the Appellant.

Seizure of the Horses

71. Upon concluding that animals are in distress and that an owner has not acted promptly to relieve that distress, the Society can take the steps it considers necessary to relieve them of distress. The *PCAA* sets out the following definition of “distress” in section 1(2):

1 (2) For the purposes of this Act, an animal is in distress if it is
(a) deprived of adequate food, water, shelter, ventilation, light, space, exercise, care or veterinary treatment,
(a.1) kept in conditions that are unsanitary,
(a.2) not protected from excessive heat or cold,
(b) injured, sick, in pain or suffering, or
(c) abused or neglected.

72. On January 7, 2016, the Society determined that the Appellant’s horses were in distress based on the condition of the horses and of the property, and to relieve them of that distress determined that it was in the horses’ best interest to take custody of them. The first question for the Panel in this case thus whether the horses were in distress when they were seized by the Society on January 7, 2016.
73. In making its determination, the Society stated that it relied in large part on the observations of veterinarian Dr. St-Laurent. Her report and testimony described numerous hazards that the horses had ready access to, including poor fencing, deep mud, broken wood pieces with nails and screws protruding, metal grids in the mud and sheet metal with rusty torn sharp edges (some at eye level) on the shelters. In addition, the mud was reported to be particularly deep in areas where the horses had to go through to access either their feed or to get into a shelter.
74. As indicated by the Society in its submissions, the *PCAA* places a positive duty on animal owners, pursuant to section 9.1:

Duties of persons responsible for animals

9.1 (1) A person responsible for an animal must care for the animal, including protecting the animal from circumstances that are likely to cause the animal to be in distress. [emphasis added]

75. It is the view of the Panel that the conditions of the property on January 7, 2016 as described in some detail by Dr. St-Laurent, as well as by SPC Auzins in her testimony, were such that they posed a significant risk of injury, pain and/or suffering to all of the horses on the property. We refer to the hazards such as deep mud, broken wood pieces with nails and screws protruding, and metal grids, particularly in areas where the horses were essentially forced to go through in order to access either feed or shelter. Because an animal is in distress (as defined in 1(2)(b) of the *Act*) under any of these conditions, the Appellant was not protecting her horses from circumstances that are likely to cause them to be in distress.

76. We do not accept the Appellant's position that this conclusion should be different because of alleged defects in the Notices, inadequate time given to correct the deficiencies, or failures to provide guarantees of return. The duty to avoid distress lies on the owner and these animals were clearly in distress. In our view, the Society was not required on the facts of this case to leave the horses in a state of distress and give the Appellant more time to correct the deficiencies. Removing all of the horses from an environment that put them at significant risk of injury, pain and/or suffering was, in the view of the Panel, in the best interests of the animals and removed them from being in distress. We agree with Dr. St-Laurent's opinion that the property was not a safe or appropriate environment for horses at the time of the inspection. We would note as well that the Appellant's veterinarian, Dr. Jeanneret, wrote in her February 2, 2016 report that she concurs with the findings that the property needs work to be safe for horses.
77. Similarly, numerous horses had evidence of dermatitis, due to chronic wet conditions and Dr. St-Laurent indicated that "the amount of horses with significant dermatitis was very high and proper regular grooming and better environment would have prevented the issues." Similar to the above situation, the Appellant was not protecting her horses from circumstances that are likely to cause them to be in distress due to the dermatitis. This condition was prevalent in so many of the horses, that it was reasonable to remove them all from the conditions that brought it about.
78. As noted in the evidence of Dr. St-Laurent and SPC Auzins, the horses were also being deprived of adequate shelter and being kept in conditions that were unsanitary.
79. To reiterate it is the view of the Panel that removing the horses from an environment that put them at significant risk of injury and sickness and the resultant pain and/or suffering was the correct and reasonable action for the Society to have taken. The Panel would note also on this point that that Dr. Jeanerret concurred with Dr. St-Laurent that, "...the property needs work to be safe for horses."

Return of the Horses

80. Having determined that the horses were in distress the second question for the Panel in this case is should the horses be returned to the Appellant?
81. We note that the legislative framework on this question was described in *Eliason v SPCA*, 2004 BCSC 1773 where Mr. Justice Groberman (as he then was) stated:

The scheme of the Act clearly is designed to allow the Society to take steps to prevent suffering of animals, and also to allow owners of animals to retrieve them, or have the animals returned to them, if they are able to satisfy the Society that the animals will be taken care of.

82. We also note the following passage from *Brown v BC SPCA*, [1999] B.C.J. No. 1464 (S.C.):

The goal and purpose of the act is explicit in its title. It would be unreasonable, in my view, to interpret the Act as the Plaintiff's counsel suggests. In the interest of preventing a recurrence of the cause or causes leading to the animal being in the distress in the first place, the court must be satisfied that if the animal is returned to its owner, it will remain the good condition in which it was released into its owner's care.

83. Based on the above, the Panel agrees with the Society that, in deciding whether the horses should be returned to the Appellant, it must be satisfied that they will remain in satisfactory condition - that their best interests are paramount. The Appellant had a number of reasons (including lack of clarity in the Notice of Distress, too short a timeframe and the wrong time of year to complete the necessary work, personal matters including time in hospital and lack of finances to invest into a leased property) for not having made the changes necessary to provide a safe environment for the horses to be returned. The fact remained, however, that Ms. Moriarty was correct and reasonable in her assessment that the horses would not remain in a satisfactory condition if returned to the Appellant at the time of her decision on February 12, 2016, as all of the evidence suggested that no substantive changes had been made or were imminent. On February 2, 2016, Dr. Jeanneret submitted a report that assessed what needs to be addressed in order to bring the Appellant's leased property up to a standard that would provide an environment suitable for the horses to be returned. The Panel must state its disappointment that there was not, at that point, some immediate indication from the Appellant to the Society that this work would be undertaken. The Appellant, in this regard, offered no plan or reasonable belief to the Society that she would or could improve her property to provide a safe return of the horses.
84. As noted above, however, the evidence tendered at this hearing disclosed considerable new activity and efforts by the Appellant that the Society could not have taken into consideration when making its February 12, 2016 review decision not to return the horses to the Appellant, as those activities and efforts took place after that decision. After the sale of the Appellant's home was finalized on February 22, 2016, significant improvements to her leased property were undertaken according to the testimony of Dr. Jeanneret and the testimony and March 15, 2016 affidavit of the Appellant. The Society clearly stated in its closing argument at the hearing that it was not previously provided with any information about the work being undertaken.
85. In giving consideration on how to deal with this evidence, the Panel turned to the decision of *Grauer J. in BC Society for the Prevention of Cruelty to Animals v. British Columbia (Farm Industry Review Board)*, 2013 BCSC 2331 for guidance:

[50] The SPCA raises, however, two procedural objections that, it says, resulted in procedural unfairness.

[51] The first is that the FIRB, having (allegedly incorrectly) chosen to proceed by way of a hearing *de novo*, ignored evidentiary rules, in particular the *Palmer* principles, concerning the admission of fresh evidence: see *R v Palmer*, [1980] 1 SCR 759 at 775.

[52] What the FIRB said was this:

85. When we look at the reform legislation as a whole, the clear intent was to give BCFIRB, as the specialized appeal body, full authority to operate in a way that is flexible and accessible to lay persons, and to use its expertise to ensure that decisions are made in the best interests of animals. Engaging in arguments about what is “the record” and how to apply the “Palmer principles” to every piece of evidence tendered in situations that are necessarily dynamic and unfolding, would make no sense in this context. Requiring BCFIRB to “defer” to findings and judgments that it believes have been overtaken by circumstances or wrong on the merits does little to enhance the interests of transparency and accountability. [emphasis added]

[53] I agree with this analysis. As I have already observed, the procedure followed by the FIRB was not a hearing *de novo* as the petitioner maintains, but a flexible approach specifically crafted to accomplish the intent of the legislation in the context of animal welfare and lay participation. This included taking into account developments occurring since the SPCA's decision was made. As I see it, this was entirely in accord with the inevitably fluid nature of the situation, and well within the powers granted by section 20.5 of the PCAA. Nothing in the materials before me supports the contention that this process resulted in any unfairness to the SPCA. A failure to have followed it, however, might well have resulted in unfairness to the owner and unkindness to the dogs. [emphasis added]

86. The Panel, in the circumstances of this case, finds that developments made by the Appellant since the Society issued its written reasons are substantial and persuasive. The Panel also finds it is well within its own authority to consider these new developments in making a decision regarding the return of the seized animals. The Panel finds no fault in the written reasons of the Society but also finds that in this case, circumstances have changed significantly, and those circumstances are relevant to the exercise of our remedial power under s. 20.6 of the *PCAA*.
87. The Panel notes that Ms. Moriarty wrote on several occasions that it was her desire to return the horses to the Appellant, as long as the Appellant provided them adequate housing:
 - a. January 20, 2016 email: "I want to reiterate that the main concern with respect to the horses was the environment (although there were other concerns regarding feet and some medical in some of the horses.) If you were to find a suitable property and ensure any ferrier/vet care was attended to, the BC SPCA would look closely at the option to return some or all of the horses."
 - b. January 21, 2016 email: "It is my sincere hope that we can conclude this as soon as possible and you are able to find a suitable property to house the horses."
 - c. Letter dated January 21, 2016: "If you are able to find a suitable property and adequate accommodations for the horses, I am willing to return the horses..." And in the same letter, "I don't think I have ever had a case where I was so adamant about the fact that we were willing to return the animals. Unfortunately, you have made no significant effort to date to make changes to the Property. [emphasis added]
88. The Panel fully agrees with Ms. Moriarty that from the time of the initial attendance on the property on December 16, 2015 to the time of her February 12, 2016 decision not to return the horses, there was very little if any demonstrated attempt at making any improvements to the property.
89. However, it is our view from the evidence heard at this hearing that the objectives sought by Ms. Moriarty have now been achieved.
90. Dr. Jeanneret described the work being undertaken on the property as a "full revamping". Areas that had previously become deep with mud were scraped down to the hardpan and filled in, and the mud has been moved to one small area of the property, which is being fenced off. All of the debris, old fencing material and loose or protruding metal sheeting have been removed and the only remaining areas of concern are the completion of fences and shelters, which Dr. Jeanneret estimated would be complete in six to eight working days after March 18, 2016. Dr. Jeanneret stated further that she would be willing to do a final review of the property following completion of the improvements, if that could somehow assist in the process. The Panel was encouraged by this

testimony and is of the unanimous view that it is in the best interests of the animals to return the animals to the Appellant on the condition that the significant work that has been underway is promptly completed. To that end, the Panel's order in this case requires that the effective date of the order be delayed to give the Appellant a reasonable opportunity to arrange for Dr. Jeanneret to attend the property in order to assess whether the conditions outlined in Paragraph 94 below are carried out, such that the horses can be returned to an environment that will not cause them distress.

VIII. ORDER

91. Section 20.6 of the *PCAA* reads as follows:

20.6 On hearing an appeal in respect of an animal, the board may do one or more of the following:

- (a) require the society to return the animal to its owner or to the person from whom custody was taken, with or without conditions respecting
 - (i) the food, water, shelter, care or veterinary treatment to be provided to that animal, and
 - (ii) any matter that the board considers necessary to maintain the well-being of that animal;
- (b) permit the society, in the society's discretion, to destroy, sell or otherwise dispose of the animal;
- (c) confirm or vary the amount of costs for which the owner is liable under section 20 (1) or that the owner must pay under section 20 (2).

92. The Order we have drafted reflects the evidence of Dr. Jeanneret summarized above at paragraphs 66 and 67:

66. Having seen the property as recently as the evening before the hearing, Dr. Jeanneret described the work overall as a "full revamping" of the property. She stated that the areas that had previously become deep with mud were scraped down to the hardpan and filled in, and that the mud has been moved to one small area of the property, which is being fenced off. The 14 acre property will only have about 1 acre less available for the horses through these changes. She said that all of the debris, old fencing material and loose or protruding metal sheeting have been removed. The only remaining areas of concern are the completion of fences and shelters, and she estimated that these remaining improvements to the property would be complete in another six to eight working days.

67. When asked by the Panel about the risk of the property deteriorating again after the work is complete, Dr. Jeanneret stated that all properties require some ongoing maintenance. Also in response to questioning, she testified that she would be willing to do a final review of the property following completion of the improvements, if that could somehow assist in the process.

93. Pursuant to section 20.6(b) of the *PCAA*, our Order reads as follows:

Effective at the end of the business day on **April 5, 2016**, the Society is required to return to the Appellant's care the 26 horses subject to this appeal provided that the Appellant, prior to that time, has provided the Society with written confirmation from Dr. Stefanie Jeanneret that the Appellant's leased property, in the interest of preventing a

recurrence of the cause or causes leading to the animal being in the distress in the first place,

- (a) has been adequately fenced;
- (b) has had debris and hazards to the horses removed;
- (c) has had excessive mud contained in an area not accessible to the horses;
- (d) has made adequate shelter available for all horses.

94. We have selected the April 5, 2016 (which is the original date that the Panel decision was anticipated to be delivered and was the date until which the Society calculated its = costs of care) date as one that provides the Appellant with reasonable leeway based on Dr. Jeanneret's evidence of only 6-8 working days to complete the work (April 1, 2016 would be eight days from the hearing). If the Appellant fails to provide the written confirmation from Dr. Jeanneret as set out above and in accordance with the timeline set out above, the Society will be permitted, in its discretion, to destroy, sell or otherwise dispose of the horses. It is noted from the Society's submissions that it intends to transfer ownership of the horses to a compassionate person or family capable of providing the horses with appropriate accommodations.
95. The Panel wishes to make clear that it remains seized of this matter for purposes of the Order, including adjusting the costs order (should that be necessary) if the animals are returned sooner than April 5, 2016, and including entertaining a request for an extension of the April 5, 2016 date if **exceptional and unforeseen** circumstances arise and if BCFIRB is notified prior to the end of business on that date. In the case of a requested extension that is granted, the Society may apply for an order increasing the costs of care to reflect the circumstances.

IX. COSTS

96. Section 20 of the *PCAA* provides:

- (1) The owner of an animal taken into custody or destroyed under this Act is liable to the society for the reasonable costs incurred by the society under this Act with respect to the animal.
- (2) The society may require the owner to pay all or part of the costs, with or without conditions, for which he or she is liable under subsection (1) before returning the animal.
- (3) Subject to subsection (4), the society may retain the proceeds of a sale or other disposition of an animal under section 17 or 18.
- (4) If the proceeds of a sale or other disposition exceed the costs referred to in subsection (1), the owner of the animal may, within 6 months of the date the animal was taken into custody, claim the balance from the society.
- (5) Payment of costs under subsection (2) of this section does not prevent an appeal under section 20.3.

97. Section 20.6(c) provides that on hearing an appeal the board may "confirm or vary the amount of costs for which the owner is liable under section 20 (1) or that the owner must pay under section 20 (2)".
98. The Society has asked for reasonable care costs of \$67,594.71 pursuant to s. 20 of the Act, which estimated as follows, as per Ms. Moriarty's affidavit:

Veterinary and grooming costs	\$8,652.79
Hauling costs	\$1,890.00 (Tab 38, p. 416)
SPCA time attending to seizure	\$480.00

Housing, feeding and caring for the horses	\$56,571.92
TOTAL:	\$67,594.71

99. The Society emphasizes that it is a non-profit organization, and that holding animals strains the Society's resources (particularly large-breed animals like the Horses). The Society also states that there are additional costs incurred by the Society, but the Society waives the same to allow a final decision at this time.
100. The veterinary and grooming costs are found in Tabs 31, pp. 277 to 283 and Tab 38, pp. 420 to 439 totaling \$8,652.79, and were broken down as follows:

Tab 31, p. 277	\$892.50	Tab 38, p.427	\$122.06
Tab 31, p. 278	\$837.38	Tab 38, p.428	\$215.25
Tab 31, p. 279	\$347.80	Tab 38, p.429	\$235.15
Tab 31, p. 280	\$408.74	Tab 38, p.430	\$232.58
Tab 31, p. 281	\$330.72	Tab 38, p.431	\$377.48
Tab 31, p. 282	\$92.03	Tab 38, p.432	\$333.90
Tab 31, p. 283	\$481.95	Tab 38, p.433	\$78.75
Tab 38, p. 420	\$246.75	Tab 38, p.434	\$81.81
Tab 38, p. 421	\$924.00	Tab 38, p.435	\$175.98
Tab 38, p. 422	\$36.75	Tab 38, p.436	\$175.98
Tab 38, p. 423	\$78.75	Tab 38, p.437	\$486.15
Tab 38, p. 424	\$455.44	Tab 38, p.438	\$122.85
Tab 38, p. 425	\$309.96	Tab 38, p.439	\$268.28
Tab 38, p. 426	\$304.50		
		Total:	\$8,652.79

101. The \$480 in labour costs respecting its investigations and seizure of the Horses is based on \$12 per hour x 5 hours (approx.) x 8 employees of the Society.
102. The Society's costs to house, feed and care for the Horses in fact exceed \$56,571.92, and has been calculated as follows: Cost for all horses, excluding Artie, Taffy and Jazzie: 82 days (January 7, 2016 to March 28, 2016 (being ten days after the anticipated date of the Tribunal hearing)) x \$25.58/horse x 24 horses= \$50,341.44; Cost for Artie: 48 days (January 7, 2016 to February 23, 2016 (being the date Artie was euthanized)) x \$25.58 x 1 horse = \$1,227.84; Cost for Taffy and Jazzie: (54 days (January 7, 2016 to February 29, 2016) x \$25.58 x 2 horses = \$2,762.64) + (28 days (March 1, 2016 (being the date of transfer to clinic for foaling out (Tab 38, p. 440)) to March 28, 2016) x \$40/horse x 2 horses = \$2,240.00) = \$5,002.64.
103. The sum of \$25.58 per day per horse is broken down as follows: Bedding costs: \$1.00, Hay and Feed costs: \$6.18, Staff time (at a rate of approximately \$12.00 per hour): \$10.00 (20 minutes stall and horse cleaning, including inspection of vitals: \$4.00 and 15 minutes morning feeding: \$3.00 and 15 minutes evening feeding: \$3.00); and Boarding costs: \$8.40 (this includes expenses associated with utilities (heating/electricity); general facility upkeep and maintenance; administration costs including ordering supplies and managing staff (cleaning and food supplies for animals); taxes on land use; maintaining the Society's computer office and other management systems; interacting with the Horses throughout the day beyond the mere feeding and cleaning of

kennels including ensuring their emotional contentment; interacting with, directing, training and coordinating volunteers and other staff members, all for the benefit of the Horses).

104. The Society expressed its view that included in the above amounts is the extra work done by Society staff including stall / paddock cleaning (daily), water bucket cleaning / refilling (daily), grooming, bathing (as needed – is done daily for some horses with severe dermatitis, every other day or every third day for other horses depending on the degree of their skin issues that they came in with, and as needed for daily care depending on weather, if the horse rolls / lays down, etc.), rinsing or bathing horses after turnout so no dirt / mud accumulates (required as some of the Horses had mud fever / rain scald / dermatitis), medical treatments such as applying rain scald and mud fever creams, treating cuts, etc., welfare / health checks, vitals, assessing individual needs, and related activities.
105. The Society asserted that the costs incurred by the Society in caring for the Horses are generally similar and consistent with animal maintenance and care costs charged by other shelters. By way of example, it provided correspondence using the Appellant's same stable (for price comparison), namely Triple CCC Stables, which set out an estimate for monthly boarding fees for full board per month per horse of \$420.00, a rate for regular grooming per month per horse of \$25.00, and a rate for daily vital checks per day per horse of \$25.00, for a total cost per month per horse = \$1,195.00 translating to a total cost per day per horse = \$39.83. The Society provided three other stables' costs for comparison.
106. The Appellant asserted that the costs for caring for the horses including veterinary invoices were unreasonable.
107. The Appellant had established with the veterinarian Dr. Jenneret that the incubation time for pneumonia was 3 - 14 days, and asserted that the horses had been in care for longer than the incubation period so did not have pneumonia at the time of seizure.
108. The Appellant testified that what the Society spends on hay and feed was more than she spends on hay and feed. She said she had never heard of spending time routinely checking vitals on horses.
109. The Appellant asserted that the Society's boarding fees are almost double that of the facility she received a quote from. She said the charge for daily vitals is unreasonable as there was no evidence vitals were taken daily on each horse. The Appellant also asserted there was no indication daily vitals were necessary.
110. The Appellant asserts the Society's affidavit indicates a stable places the fair market value of boarding at \$25 per horse per day but described its own costs using that same stable as \$39.83. The Appellant further explained that using the Society's figures, the vitals checks were 64% of the daily stable boarding costs which, if subtracted, leaves \$14.83 as the daily cost per horse.
111. The Appellant also asserted that the Society allocates \$8.40 of its overhead per horse to the Surrey facility, and applies that charge to the horses at the Aldergrove facility. The Appellant states it is unreasonable to allocate overhead from Surrey to the Aldergrove horses as that represents being charged twice for overhead (overhead already comprising part of the charge at Aldergrove).

112. The Appellant asserts the Society provides no support for calculating its estimates of overhead and is therefore unreasonable and arbitrary.
113. The Appellant asserts that in *Kelpin*, the charge per horse in April 2015 was \$19.52 and at that time the Society submitted that that amount was reasonable as it was the same rate it paid other facilities, despite its own rate being higher. This represents a 31 % increase in daily cost per horse in 12 months.
114. The Appellant asserts that the Society, which conducts seizures with enough regularity to justify having boarding facilities, should have a process in place to calculate actual costs in a real time basis which would abide with the *PCAA*'s requirement regarding costs incurred and would allow the Society to track its costs precisely. Failure of the Society to have such a tracking system makes its reliance on arbitrary unsupported estimates patently unreasonable and a violation of natural justice.
115. The Appellant further argued that it was not privy to the contract between the stable and the Society and had no way of determining whether daily or monthly rates were negotiated and did not allow the owner to negotiate better terms.
116. The Panel first turned its mind to daily boarding fees. The Panel has no dispute and none was presented regarding the boarding out fees for the two foaling horses. The Panel notes that the amount of \$14.82 was deemed reasonable in April 2015 by the Society and the Society provided no reason for the increase. The Panel also notes that in *Leduc v BCSPCA* heard by the Farm Industry Review Board on February 16, 2016, the Society determined its reasonable costs per horse per day for boarding to be \$15.
117. Further, if one were to apply the proper math to the Triple CCC stables (the one stable both parties used to support their individual arguments around boarding costs, thus the one the Panel looked closely at), the full board cost was \$420 per month per horse (without daily vitals, which Ms. Moriarty uses erroneously in her calculation for comparison) less \$25 per horse for two or more horses, the cost per day is \$13.17 per day (30 day/month).
118. The Panel finds it reasonable that the amount of \$15 per day per horse be the cost of boarding, as that seems to be close to the most used figure including the Society's own previously accepted figure in *Leduc* (and a figure which the Panel in *Leduc* found to be reasonable). Therefore the cost for boarding will be 24 horses (excluding Artie, Jazzy and Taffy) x \$15 per day for a total of 89 days (January 7, 2015 to April 5, 2016 the tenth day after the hearing and anticipated day of decision) for a total boarding fee for 24 horses to be \$32,040. Artie was boarded for 48 days until he was euthanized, for a total boarding fee of (\$15 x 1 x 48) \$720. The two remaining horses, Jazzy and Taffy, were boarded for 54 days (January 7, 2016 to February 29, 2016) x \$15 x 2 horses = \$1620) + (36 days (March 1, 2016 (being the date of transfer to clinic for foaling out (Tab 38, p. 440)) to April 5, 2016) x \$40/horse x 2 horses = \$2,880.00). The total amount owed for boarding of all seized horses is \$37,260. The Panel notes that although the Appellant disputed the feed fee, no comparable information was provided to the Panel.
119. The Panel then turned its mind to transportation fees and found them to be reasonable. There was no dispute about these charges. The total amount the Appellant is liable for, considering the horses were seized for being in distress, is \$1,890.

120. The Panel found the incurred labour costs respecting its investigations and seizure of the Horses, estimate at \$480.00 (\$12 per hour x 5 hours (approx.) x 8 employees of the Society) to be reasonable, and noted there was no argument against the reasonableness of these costs.
121. Finally the Panel considered the veterinary costs. There was no dispute regarding the costs of veterinary care at the time of seizure nor was there any dispute about the pregnancy costs related to the two pregnant mares. There was some dispute about the cost of veterinary care for the pneumonia that occurred or started showing signs of breathing difficulty almost two months after seizure.
122. The Panel was somewhat moved by the argument put forth. The Panel understood the argument that since the pneumonia did not exist at the time of seizure, the Appellant should not have been liable for the costs of veterinary care to treat the pneumonia. However, the Panel does not find that the Appellant is excused from paying any of the veterinary bills. There was no evidence put forward by either party that the cause of the pneumonia was because of something the boarding facility did or did not do. There was no veterinary opinion, other than the incubation period for pneumonia, about whether this horse was predisposed to getting this illness or was somehow compromised so could more easily get this illness. There was no evidence put forth how this illness was incurred. The Panel is of the view in the circumstances of this case with this horse, Kiss, that the Appellant as owner and continued owner of this horse, is responsible for its healthcare-related veterinary costs. The Panel therefore finds that the sum of \$8,652.79 represents the reasonable veterinary fees associated with the seizure and care of her horses.

X. COSTS ORDER

123. The Panel orders that the Appellant pay the amount of **\$48,282.79** to the Society as the reasonable costs incurred by the Society with respect to the animals. To be clear to the Appellant, she must pay \$48,282.79, which the Panel has determined is the total reasonable costs she is liable for, including the veterinary expenses, transportation, SPC time, cost of boarding and all other costs.
124. The Appellant does not need to pay that amount before picking up the horses, but must arrange for and pay the cost of transporting the horses back from where the Society has currently boarded them. The Panel does not know how much that is, but it is rightfully a cost the Appellant must bear herself, given the condition from which the horses were seized.
125. To be very clear to the Appellant, if she does not pay the \$48,282.79 she is liable for to the Society, she will not lose her horses for the reason of non-payment.
126. The Society asserted that it did not waive its rights under section 20(2) of the Act and the Society specifically seeks payment of the above sums from the Appellant prior to any return of the horses, should the Panel order the same.
127. The Society asserted that, concerning payment of such costs prior to animal returns, in its experience, animal owners usually fail to make payments to the Society after animals are returned (or, if not returned, they simply fail to make such payments to the Society). The Society's costs to attempt to enforce a cost award usually outweighed any possible recovery. As such, the Society says, its normal practice is to forego collection.

128. The Panel is not persuaded that the Appellant should pay her costs prior to having the animals returned to her. If the Panel were to make such a decision in the circumstances of this case, it, in effect, could delay or prohibit the return of the horses to the Appellant and the Panel has already determined that it is in the best interests of the horses to be returned to the Appellant.
129. The Panel is also of the view that the Appellant owes the money to the Society and the failure, in the Society's experience, of other individuals being unwilling or unable to pay should not be visited upon this Appellant.

Dated at Victoria, British Columbia this 1st day of April, 2016

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Brenda Locke, Presiding Member



Andreas Dolberg, Vice Chair



Corey Van't Haaff, Member